



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 828-99

6 August 1999

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL OF RECORD E [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 with attachments

(2) Case summary

(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting, in effect, that the characterization of his discharge and his reenlistment code be changed.

2. The Board, consisting of Ms. Brown, Mr. Leeman, and Mr. Mazza, reviewed Petitioner's allegations of error and injustice on 27 July 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Marine Corps on 11 January 1994. During his period of service he was the subject of one disciplinary incident consisting of nonjudicial punishment (NJP) for disobedience.

d. On 21 October 1996, after undergoing physical examination, Petitioner was diagnosed with patellar femoral pain syndrome and recommended for an administrative separation.

e. Prior to Petitioner's separation he was informed that he was not recommended for reenlistment due to his physical

condition as evidenced by the diagnosed patellar femoral pain syndrome.

f. On 5 June 1997 Petitioner was issued a general discharge under honorable conditions and assigned an RE-4 reenlistment code. At the time of his discharge Petitioner's conduct average of 4.0, which was required for a fully honorable characterization of service.

g. In Petitioner's application he contends that his physical condition is correctable and was never a permanent condition.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board's finding is based on Petitioner's length of honorable service and periodic conduct marks.

The Board initially recognizes the nature of Petitioner's fairly minor disciplinary infraction. Additionally, the Board notes that Petitioner's conduct average was sufficiently high to warrant a fully honorable characterization of service. It is clear that Petitioner conducted himself in an exemplary manner following his NJP, and that his diagnosed patellar femoral pain syndrome was not a permanent physical condition. Based on the foregoing the Board concludes that no useful purpose is served by continuing to characterize Petitioner's service as having been under honorable conditions or his condition a basis for nonreenlistment in the Marine Corps. The Board further concludes that it is appropriate to re-characterize Petitioner's service as fully honorable and to change his reenlistment code to RE-3P. Accordingly, the Board concludes that relief in the form of recharacterization of Petitioner's discharge and a change of his reenlistment code is most appropriate.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was honorably discharged on 5 June 1997 and assigned an RE-3P reenlistment code vice an issued the general discharge under honorable conditions and the assigned RE-4 reenlistment code on the same day.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

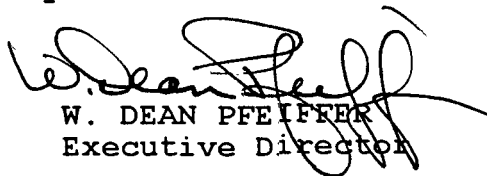
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



ALAN E. GOLDSMITH
Acting Recorder

ROBERT D. ZSALMAN
Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a) has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director

INDEX REPORTING WORKSHEET

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
 MC - 99 - 03623 - - 1100899

CASE NO.

S R
 U E
 F C
 F O
 I N
 X

D D M M Y Y
 DATE OF BOARD
 DECISION

TYPE D D M M Y Y
 DISCH DATE OF DISCH

26 27 28 29 30 31 32 33 34 35 36 37 38 39 40
 DISCHARGE AUTHORITY
 (LEFT JUSTIFY)

41 42 43 44 45
 REASON FOR
 DISCHARGE

46 47 48 49 50 51
 BOARD DEC'N
 (LEFT JUSTIFY)

52
 REVIEWING
 AUTHORITY

53 54 55 56 57
 ISSUES ADDRESSED

58 59 60 61 62

63 64 65 66 67

68 69 70 71 72

73 74 75 76 77



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

LCC:tj
Docket No: 3623-99
10 August 1999

PFC [REDACTED] USMC
[REDACTED]
[REDACTED]
[REDACTED]

Dear PRIVATE FIRST CLASS [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 10 August 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by CMC memorandum 1400/3 MMPR-2 of 22 July 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
MANPOWER AND RESERVE AFFAIRS DEPARTMENT
HARRY LEE HALL, 17 LEJEUNE ROAD
QUANTICO, VIRGINIA 22134-5104

IN REPLY REFER TO:
1400/3
MMPR-2
22 Jul 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE PRIVATE FIRST CLASS [REDACTED]
[REDACTED] USMC

Ref: (a) DD Form 149 of 30 Apr 99
(b) MCO P1400.32B (Enlisted Promotion Manual)

1. Reference (a) is private first class [REDACTED] request to have his current rank backdated to reflect 1 June 1998 vice 1 July 1998. He states he was not recommended for promotion to private first class for 1 June 1998 because he was assigned to weight control. He further states that although he signed a page 11 entry of acknowledgment, it was not reported in the Marine Corps Total Force System (MCTFS) therefore he feels that he rated the promotion to private first class for 1 June with backpay.

2. Although the assignment to weight control was not entered in the MCTFS, the page 11 entry (980601) substantiates that PFC [REDACTED] was not recommended for promotion to private first class for 1 June 1998 due to the assignment to weight control. It is the Commanding Officer's responsibility to ensure information pertaining to page 11 entries are entered in the MCTFS on unit diary and kept up to date. Per paragraph 1204.3 of reference (b), the assignment to weight control is a promotion restriction, therefore PFC [REDACTED] was not eligible for promotion.

3. PFC [REDACTED] date of rank for his promotion to private first class was administratively and erroneously backdated and entered in the MCTFS as 1 June 1998. Unit Diary action has been taken by this Headquarters to correct the PFC date of rank to its proper effective date as 1 July 1998.


RICHARD B. FITZWATER

Assistant Head, Enlisted Promotions
Promotion Branch
By direction of
the Commandant of the Marine Corps